

DIVISION IV
PROBATE
CHAPTER 1
DEPARTMENTAL
ADMINISTRATION AND
ORGANIZATION

Rule 4.1.1

Address, Phone and Hours for Probate Examining Division

A. The addresses, phone numbers and hours for the Probate Divisions can be found at the court's website, www.sdcourt.ca.gov.

B. In these rules, the Central Division and the North County Division will sometimes be referred to as "The Probate Court."

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.1.2

Venue for Probate

A. Venue for probate cases is divided into two divisions, Central and North County (Vista). The East and South Divisions are included in the Central Division for purposes of this rule. Original petitions must show the proper venue and be filed in the appropriate court, according to zip codes found on the court's website at www.sdcourt.ca.gov.

B. Petitions which are not filed in the proper venue pursuant to the above will be transferred on the court's own motion.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.1.3

Change of Venue

Requests for change of venue must be directed to the assigned probate judge of the court having original venue. The ex parte request must take the form of a declaration and be accompanied by the proposed order for the judge's signature.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 2
PLEADINGS: FORM AND FILING; SANCTIONS

Rule 4.2.1

Backing on Papers Filed

All wills and other testamentary documents submitted for filing must be attached to a stiff backing cover, the right side margin of which contains the document's caption (title) which must be fully visible.

(Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.2.2

Consolidation with the Lowest Number and Notice of Related Case/Petition

A. Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

B. Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, must file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first and therefore has the lowest number.

C. California Rules of Court, rule 3.300, respecting the requirements for Notice of Related Case, applies to all petitions or applications filed with the Probate Divisions of the Court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.2.3

Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division IV of these rules, the court, on motion of a party or on its own motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division IV is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto. (Adopted 1/1/2006; Renum. 1/1/2007)

CHAPTER 3

PLEADINGS: FORM OF PAPERS PRESENTED FOR FILING

Rule 4.3.1

Caption of Petitions

A. The probate filing clerk is not required to read the body of the petition or the prayer to determine notice requirements.

B. A "Register of Actions" number (ROA) will be assigned at the time the petition is set for hearing. The ROA must be stated directly below the case number in the caption of all subsequently filed pleadings related to that petition. The party giving notice of the hearing on the petition must include the ROA in the notice. (Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.3.2

Filing Documents for Calendared Matters

A. The hearing date, time and department are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

B. Petitions, Applications, and Accountings. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed no later than 4:30 p.m. three court days prior to the hearing. Any document filed after the deadline will be considered late and will not be reviewed by Probate Examining for the calendared hearing.

C. Form and Lodging of Exhibits. The foundation for exhibits submitted for the court's consideration must be set forth in appropriate declarations which must be filed with the court. However, if the exhibits accompanying a motion exceed ten pages cumulatively, they must be lodged with the court in accordance with F. below, rather than attached to the pleadings which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. Exhibits written in a foreign language must be accompanied by a translation certified by a qualified interpreter.

D. Accounting Format. Accounting schedules must be filed with the court and not lodged or attached as exhibits.

E. Lodged Documents. Lodged material must be accompanied by either a stamped, self-addressed envelope or an attorney service pick-up slip.

F. Lodgments. A Notice of Lodgment listing all of the items lodged must be filed and served on all appearing parties at the time any matter is lodged with the court. The documents lodged with the court must also be tabbed or paginated to correlate to the Notice of Lodgment. The Notice of Lodgment and the extra copy of the Notice will be filed stamped by the court. Following the return of the lodged documents by the court, the party lodging them must retain them until the applicable appeal period has expired.

G. Fax Filing. A faxed document may be filed in accordance with the California Rules of Court, rule 2.300 et seq. However, direct fax filing under California Rules of Court, rule 2.304, is not available. (Adopted 1/1/1990; Rev. 7/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.3.3

Use of Judicial Council Forms

A. The latest version of applicable printed forms of petitions, orders and other documents approved by the Judicial Council must be used in all cases, unless otherwise permitted or directed by the court. If a form is inadequate for a given circumstance, an addendum may be attached to the form. When no applicable form has been so approved, counsel must draft their own documents following requirements for pleading format.

B. When printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder.

C. Counsel are cautioned that printed forms prepared by banks or others may not be acceptable for filing.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.3.4

Affidavits and Declarations Under Penalty of Perjury

A. A declaration must meet all of the requirements of Code of Civil Procedure section 2015.5 to be acceptable in lieu of an affidavit and may contain the following language, whether executed within or without California:

“I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date].

[signature of fiduciary]

[name of fiduciary]”

B. If such declaration is executed within California, it may take either the above form or the following form:

“I declare [or certify] under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on [date] at [city], California.

[signature of fiduciary]

[name of fiduciary]”

C. Where a corporation is the fiduciary, the verification must be made by an officer on its behalf and should take the following form:

“I am [title of officer] of the petitioner in the above-entitled matter, and I am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents, which are true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe it to be true. I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city] California.

[signature of officer]

[name of officer]”

(Adopted 1/1/1990; Renum. 7/1/2003; Renum. 1/1/2006)

Rule 4.3.5

Complete Address in Petition or Report

Where a petition or report is required to include an address, a full and complete number, street, city, state and zip code for the person's place of business or place of residence must be set forth. Where the mailing address is a different address, it must also be included.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.3.6

Multiple Minors and Conservatees

A. Where several minors share the same mother, a Petition for Guardianship may be filed under one case number and include all the minors.

B. Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if the assets of the estate are community property. In all other cases, the conserved husband and wife must have separate case numbers.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

CHAPTER 4 SETTINGS, ASSIGNMENTS AND CONTINUANCES

Rule 4.4.1

Calendar Settings of Probate Matters

A. All petitions in probate matters which require a hearing will, upon being filed with the court, be set by the clerk on the normal calendar day.

B. Any request for early setting must be approved by the Probate Examining Department and will be granted only for good cause.

C. Calendar times may be obtained from the court's website at www.sdcourt.ca.gov or by calling the Business Office at each location.

D. Calendar times are subject to change. (Cross Reference: Contested Matters, Chapter 22.)

E. All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with a completed "Duties and Liabilities" form.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.4.2

Probate Hearing Once Noticed Cannot be Advanced

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.4.3

Continuances

A. Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioning counsel or a petitioner acting without an attorney. Continuances may not be granted on the date of the hearing, unless requested and granted through Telecourt as stated at Rule 4.6.2 or by the court when the matter is called for hearing.

B. A one-week continuance will only be granted for good cause.

C. A first and second continuance of two weeks or more may be obtained by calling the Probate Examiner. After two continuances have been granted, further continuances must be approved by the court.

D. Continuance policy is subject to change.

E. A preapproved matter will be continued if an objection is made at time of call and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.

F. Probate examiners have authority to continue the hearing date on petitions or other pleadings filed with the court. However, where responses or objections have been filed or where counsel asking for a continuance has reason to know another party or counsel may attend the hearing, such counsel must advise all such parties and counsel of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense.

(Adopted 1/1/1990; Rev. 1/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.4.4

Setting Matters Already on File

A. When a petition is on file but not set for hearing, it will be set by the probate examiner upon request. The request must be in writing and a notice of hearing must accompany the request. A petition which has become out-of-date will be denied a new setting date and a new petition will be required to be filed.

B. If the matter was previously set and taken off calendar because of defects or nonappearance, the material necessary to correct the defects must accompany the request for setting. The request for setting may be refused without the corrections.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.4.5

Telephonic Appearances

In accordance with the provisions of the California Rules of Court, rule 3.670(l), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances. A party that intends to appear telephonically for a hearing listed in the rule must provide notice as specified in the California Rules of Court, rule 3.670(g). The party must also arrange the appearance with CourtCall, including following any notice requirements

and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to the California Rules of Court, rule 3.670(h).
(Adopted 1/1/2009)

CHAPTER 5 NOTICES

Rule 4.5.1

Additional Notice Requirements

A. Under the provisions of the Probate Code, the court may require additional notice in any matter.

B. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined or substantial fees for extraordinary services are requested.

C. The court may require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

D. The probate calendar clerk will prepare and post the notice as required pursuant to Probate Code section 10308, subdivision (c). The clerk is not responsible for publications or mailings.

E. Notice to the Public Administrator/Public Guardian will be required in all appointment proceedings for decedent's estates when the proposed fiduciary is a creditor or not related to the decedent, and Letters Administration are requested; or when a non-resident of the United States is proposed.

F. Thirty (30) days "Notice of Hearing" to the Department of Health Services is required on petitions requesting approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 4.5.2

Proof of Service

A. It is not sufficient in proofs of service by mail to declare that notice, etc., was mailed to the persons listed in the petition. Pursuant to Probate Code section 1260 and Code of Civil Procedure section 1013, subdivision (a), the court requires the proof of service to set forth the names and addresses of the persons as they appear on the envelopes.

B. Where notice must be served other than by regular mail, the proof of service must show that notice was served by airmail, by registered or certified mail, by mail with a written acknowledgment of receipt of the notice, or by personal service.

C. Any person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or objecting to an account by such fiduciary must file proof of service of the Notice to Surety required by Probate Code section 1213 prior to the hearing on their Petition or Objection.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.5.3

Notice Re Special Letters in Will Contest

In the event of a will contest, a petition for special letters of administration will not be granted without notice to the surviving spouse, the person nominated as executor and any other person who, in the discretion of the court, appears to be equitably entitled to notice.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.5.4

Notice to Persons Requesting Special Notice

Notice must be given to or waived by any person requesting special notice, whether or not the matter is one for which special notice was specifically requested.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.5.5

Notices to Trust Beneficiaries

If a personal representative is also the sole named trustee of a testamentary or non-testamentary trust, and the estate or any part thereof is to be distributed to the trustee of the trust, then notice must be sent to the beneficiaries of the trust. In addition, the names and addresses of the beneficiaries must be listed in the petition. (Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 6 CALENDAR NOTES AND HEARINGS

Rule 4.6.1

Availability of Probate Examiner's Notes and Clearing of Defects

A. Probate examiner's notes are available to counsel to determine if any defects in pleadings or procedure have been noted by the examiner.

B. The notes are available on the San Diego Superior Court website, www.sdcourt.ca.gov.

When the examiner receives additional pleadings and updates the notes, the new notes will ordinarily be posted to the website by opening of business the following day.

C. If counsel does not have access to the internet, he may request that the notes be sent to him by attaching a "Mail Option" form which is available in Probate Services, to the petition, with a self-addressed, stamped envelope or a messenger slip.

D. After checking the notes, counsel are encouraged to call Probate Examining with any questions counsel may have or explanations that may assist in the clearing of the defects. Counsel may also appear in person to confer with Probate Examining to clear defects. All such calls or meetings must be during the open hours of Probate Examining.

E. An appearance is required on all matters not preapproved even though there are no defects.

F. To correct defects counsel are required, at least three court days in advance of the hearing date, and no later than 4:30 p.m. to supply to the probate examiner's office any additional documents or explanations necessary for approval of the petition without continuance. Any documents submitted late may not be examined before the hearing, and a continuance may be required. See Rule 4.3.2.

G. Supplements which cure defects do not require additional notice. Amendments and Amendments to pleadings require additional notice. See California Rules of Court, rule 7.53.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009)

Rule 4.6.2

Telecourt

If an uncontested matter has not been pre-approved or continued by the examiner, counsel may appear by a telephone call, at such date, time and telephone number as designated by the probate judge and posted on the court's website, www.sdcourt.ca.gov, to seek pre-approval or a continuance. Counsel must be on the phone line when the call is answered.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 7 ORDERS AND BONDS

Rule 4.7.1

Preparation of Orders

A. An order or document on a matter requiring the signature of the judge must be submitted to the Probate Business Office for review before being presented to the judge, unless counsel is otherwise directed by the court. Orders may be submitted on or after the hearing date.

B. Counsel for the prevailing party must, unless the court orders otherwise, prepare and submit a formal order. Orders must be submitted in accordance with the procedure set forth in California Rules of Court, rule 3.1312. (Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.7.2

Material to be Included in Probate Orders

A. All orders or decrees in probate matters must be complete in themselves, in that they must set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or

amounts of money affected with the same particularity required of judgments in general civil matters. The introductory paragraph must include the subject of the hearing, the date, time, department number, judge's name, and names of the parties and attorneys who appeared and whether the appearance was in person, telephonic, or that the matter was preapproved and no appearance was necessary.

B. Probate orders must be drawn so that their general effect may be determined without reference to the petition on which they are based.

C. In no case may any material appear after the signature of the judge.

D. At least two lines of text must be included on the page containing the judge's signature.

E. While in orders settling accounts it is proper to use general language approving the account, the report, and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted.

F. Orders settling accounts must also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

G. All orders for distribution (including estates, conservatorships, guardianships and trusts) must contain the following:

1. A list of the assets on hand;

2. The beneficiaries under the will or, in the event of intestacy, the heirs at law and their specific relationship to the decedent. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest must be fully set forth.

3. In termination of guardianships and conservatorships, the person or persons entitled to distribution of the assets. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest in an estate must be fully set forth;

4. A distribution schedule describing each asset and setting forth charges against distributive shares with sufficient clarity to enable each distributee to determine the net distribution;

5. A provision setting forth the persons to whom any later discovered property is to be distributed; and the appropriate share they are to receive

6. The fees and commissions allowed by the court.

7. The following statement is acceptable as a finding of assets on hand: "The court finds that the assets described in the order of distribution comprise the entire estate on hand for distribution"

H. The court will not hear any subsequently filed petition covering the same subject matter of a previous petition where the order previously made has not been submitted and approved pursuant to the requirements of these rules.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.7.3

Riders and Exhibits

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.7.4

Orders for Continuing Payment Must Have a Maximum Time Limit

The court will not make orders for continuing payments to run "until further order of the court." All such orders must provide for payments that "commence as of _____ and continue for a period not to exceed _____ months or until further order of the court, whichever shall first occur."

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.7.5

Application for Ex Parte Orders - Generally

A. All ex parte applications must comply with rule 3.1200 et seq. of the California Rules of Court.

B. All applications for ex parte orders must be reviewed by Probate Examining before presentation to the judge.

C. Any application for an ex parte order must be accompanied by a petition, and a separate order complete in itself. It is not sufficient for such an order to provide merely that the petition has been granted, for example, that the sale of property set forth in the petition has been approved.

D. Whether there are parties entitled to specific notice of any matter is not controlling as to whether a petition will be heard by the court on an ex parte application. Requirements of the Probate Code and policy of the court are determinative of whether a matter may be heard ex parte.

E. The court requires notice to all parties entitled to notice no later than 10:00 a.m. the court day preceding the hearing. Every ex parte application must be accompanied by a written declaration of such notice or of the reason it was not given as required by California Rules of Court, rule 3.1204. When a Judicial Council Form is not used, an ex parte application must also include a declaration in support of the application and a memorandum of points and authorities.

F. Filing fees must be paid and a case number issued before a party presents an ex parte application. This includes a petition for letters of special administration where no petition for probate is first filed and in those cases the ex parte petition will be filed to open the case and a conformed copy of that filed petition must be presented for the ex parte application. If a request for waiver of fees is presented, the underlying petition will be filed, however in the instance where a judicial officer must approve the waiver of fees, an ex parte application is required to be submitted with that request.

G. All papers presented for ex parte consideration must be presented with an appropriate "Ex Parte Application" coversheet. Coversheets are available at the Probate Business Office or on the court's website. Coversheets must be presented on green paper. All ex parte applications will be filed with the court irrespective of whether the relief sought was granted or denied.

H. Telephone the business office of the Probate Division for ex parte procedures specific to that location or visit the court's website, www.sdcourt.ca.gov. (Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.7.6

Matters Which May be Heard Ex Parte

Matters which may be heard ex parte include the following:

- A.** Sale of securities;
 - B.** Sale of depreciating assets;
 - C.** Family allowance (First application before Inventory);
 - D.** Guardianship and conservatorship investments;
 - E.** Appointment of special administrator;
 - F.** Appointment of temporary conservator or guardian, providing good cause is shown for the appointment without the required five days notice to the proposed conservatee and petition for appointment of general conservator or guardian is on file or will be filed at same time as the petition for temporary, see Local Rules 4.18.2 and 4.19.1 for further requirements;
 - G.** Increase in bond;
 - H.** Amendment of title of proceedings;
 - I.** Authorization to enter into exclusive listing agreement for sale of real property;
 - J.** Preliminary distribution of estate pursuant to Probate Code section 11623 on proof that Inventory and Appraisal has been filed;
 - K.** Authorization to invest in units of a common trust fund;
 - L.** Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances; and,
 - M.** Appointment of a guardian ad litem.
- (Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.7.7

Communications with the Court

Documents presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff are subject to California Rules of Court, rule 7.10(c). (See Code of Judicial Ethics.) (Adopted 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.7.8

Nunc Pro Tunc Orders Correcting Clerical Errors

A. If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake, which will relate back to the date of the original order. The order must be captioned: "Nunc Pro Tunc Order Correcting...[Caption of original order]..."

B. The order must not take the form of an amended order and must be substantially in the following form: "Upon consideration of the affidavit or declaration of _____, to correct a clerical error, the [identify the order to be

corrected, giving the title and date thereof] is corrected on the court's own motion, by striking the following [here set out the matter to be eliminated] and by inserting in lieu thereof the following: [here set out the corrected matter]”.

C. The original order is to be marked by the clerk to indicate that a nunc pro tunc order has been signed, however, the original order is not to be physically changed by the clerk in any other manner, but is to be used in conjunction with the nunc pro tunc order correcting it.

D. To prevent further errors, a complete clause or sentence must be stricken, even if it is intended to correct only one word or a single figure. Reference must not be made to page and line number of a written order intended to be changed as the line number may vary on various copies of the same order.

E. The date of the order must be left blank for the court to fill in and immediately following or below the blank date must appear the words "nunc pro tunc to [date of original order].”

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.7.9

Reserved for Future Use

Rule 4.7.10

Bonds; Additional Bond

A. In a matter where bond has previously been posted, there must be included in any current account a separate paragraph setting forth the total bond posted, the appraised value of personal property and real property subject to disposition without court approval or confirmation, the estimated annual income from real and personal property and a statement of any additional bond thereby required.

B. Conservators or guardians are required to seek ex parte authority to increase the amount of bond whenever the conditions of Probate Code section 2320.1 are met, and may not defer a request for such increase to a current account.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.7.11

Deposited Funds

A. Unless specifically authorized by the court, all cash must be deposited in a fully insured account with a bank, credit union, trust company or savings and loan. The depositing party will allege the nature and location of the account and the fact of insurance at the time of an accounting and report.

B. Money deposited into a blocked account will be excluded in computing the amount of bond necessary.

C. Where the court makes the order blocking funds at any calendared hearing, both an order on the hearing and a separate "Order To Deposit Money Into Blocked Account" (MC-355) must be presented.

D. Within 15 court days following the date of the minute order the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. If the appropriate receipt is not returned, the personal representative and counsel of record are subject to an Order to Show Cause why bond should not be posted and sanctions imposed.

E. When there is good cause for failure to comply with paragraph D, a party may present an ex parte petition to extend the time to return the receipt.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 8

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

Rule 4.8.1

Letters Issued in Decedent's Estates

A. Letters issued in a decedent's estate will expire 12 months after the date the underlying petition is approved.

B. At the hearing where the court approves the petition for administration and for letters to issue, a review hearing will be set for no later than 13 months after the date the underlying petition is approved.

C. At the time of the review hearing, if the estate has been closed or the report required by Probate Code section 12200 has been filed, the review hearing will be taken off calendar. If the estate has not been closed and the report required by Probate Code section 12200 has not been filed, the petitioner will be ordered to file a Status Report under Probate Code section 12200 and may be required to show cause why sanctions should not be imposed

pursuant to Code of Civil Procedure sections 177.5 and/or 575.5, or statutory fee reduced, for failure to file a Status Report prior to the review hearing. The court may make additional orders as, in the court's discretion, is appropriate.

D. Petitioners must file the report required by Probate Code section 12200. Failure to file the report may result in sanctions. Upon failure to comply with Probate Code section 12200, the court will consider reduction of statutory compensation pursuant to Probate Code section 12205. Counsel should file declarations at the time of Final Distribution, or at any hearing on an allowance for compensation, explaining why failure to comply with Probate Code section 12200 was beyond the control of the party seeking compensation or was in the best interest of the estate.

E. In estates for which a federal tax return is required the personal representative may file an ex parte request to extend letters of administration for an additional six months and to set the review hearing 18 months from the date at which the petition for administration was approved. The request for extension must be accompanied by a verified statement by the personal representative that a federal tax return is required for the estate. (See Prob. Code, § 12200, subd. (b).) If the estate has not been closed or a Probate Code section 12200 Report filed within 18 months, the petitioner will be ordered to file a Status Report and may be required to show cause in accordance with paragraphs C and D above.

(Adopted 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.8.2

Allegations in Petitions Re: Beneficiaries

In all petitions pertaining to the administrative duties of a fiduciary:

A. The nominated trustee of a trust created by a will must be included in the list of beneficiaries and identified as the trustee on that list. (See also Rule 4.5.5.)

B. If the interest of the beneficiary is contingent as of the date of the petition, or the happening of an event, such as survivorship for a specified period, then the contingent beneficiary must also be listed.

C. Each person provided for in the original will whose devise has been revoked in a subsequent codicil.

D. The street address and relationship of the proposed personal representative to the decedent must appear in the petition.

E. When second generation heirs are listed, the deceased ancestor through which they take must be named, along with the ancestor's relationship to decedent.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006)

Rule 4.8.3

Notice to Foreign Consul

A. When notice is required to be given to foreign consul, the identity of the proper consul must be set forth in Petition for Probate.

B. If a beneficiary whose address is in a foreign nation is an American citizen, that fact must be alleged to avoid having to set forth that nation's foreign consul.

C. Notices pursuant to this rule will be required only for an original petition for probate. This notice is in addition to that given to heirs and devisees under Section 8110 and 15-day notice is required.

D. Information as to whether a country has recognized diplomatic or consular representation in the United States may be obtained from the United States Department of State.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.8.4

Reserved for Future Use

(Del. 1/1/2009)

Rule 4.8.5

Multiple Testamentary Instruments - Proof

Each proffered instrument must be proved by a separate affidavit or declaration pursuant to Probate Code section 8220. Nevertheless, an instrument, as defined by Probate Code section 88, which has been republished by a subsequent instrument need not be proven independently of the subsequent instrument.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.8.6

Will With Deletions or Interlineations

Where the will offered for probate contains alterations by interlineation or deletion on its face, the petition for probate must contain allegations to explain the alterations and state petitioner's position in the matter. The petition must request that the interlineated portion be admitted or not admitted or that the deletions take effect or be disregarded or make such other request as petitioner finds to be according to the law. The petition must further contain statements of all relevant facts regarding the alteration, for example, whether the will was in the possession of the decedent. Such additional statements must be set forth in an attachment to the Judicial Council form petition.

Proof of holographic instrument, Judicial Council form DF-135, is required. (Prob. Code, §§ 8221, 8222.) (Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.8.7

Bonding of Personal Representatives

A. When a bond is required, the minimum bond that will be set for a resident and non-resident personal representative upon initial appointment will be \$20,000.

B. Bonds required by the court at the hearing of the petition for appointment of the personal representative must be filed with the Clerk of the Superior Court before the clerk will issue the appropriate letters.

C. Any request for a waiver of bond must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim.

D. Non-resident personal representatives are subject to no less than the minimum bond notwithstanding a waiver of the bond by beneficiaries, heirs or by waiver in the will.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.8.8

Declinations and Consents to Serve

A. It is insufficient merely to allege that the person or non-California bank or trust company named in the decedent's will as executor thereof is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court.

B. If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court. If a consent to act cannot be obtained, the petition must state facts regarding both the efforts to obtain consent and the results of those efforts.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006)

Rule 4.8.9

Continuance to Permit Filing of Contest

If an interested party appears in person or by counsel when a petition for probate is called for hearing and declares a desire to file a written contest, the court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will proceed.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.8.10

Multiple Representatives

The clerk will not allow less than all appointed representatives to qualify and will only issue letters jointly to all appointed representatives, unless the order of appointment specifically provides for separate qualification.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.8.11

Statement of Address of Nonresident Personal Representative

A nonresident personal representative is to file with the court a signed and acknowledged statement setting forth the personal representative's permanent address. If this has not been done and anyone questions the handling of the estate, the court, on its own motion, may undertake proceedings for removal of the personal representative pursuant to Probate Code section 8573.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 9 SUMMARY PROCEEDINGS

Rule 4.9.1

Petition to Set Aside Small Estate

A petition to set aside a small estate (under Prob. Code, § 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing at the same time.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.9.2

Spousal Property Petition

A. If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property, the following information should be included in the spousal property petition:

1. Date and place of marriage;
2. Ownership of any real and personal property on date of marriage and a description and approximation of values;
3. Decedent's net worth at time of marriage;
4. Decedent's occupation at time of marriage;
5. A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;
6. The identification of any property described in 2 or 5 above which is still a part of this estate;
7. A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and
8. Any additional facts upon which the claim that property is community or quasi-community property is based.

B. If a Petition references a will, the will must be on deposit with the court pursuant to Probate Code section 8200.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.9.3

Proceedings to Establish Fact of Death

A. A petition to establish the fact of death (under Prob. Code, § 200), where title to or any interest in property is affected by the death of a person (as in the case of death of a joint tenant or life tenant), must be filed as a separate petition from a petition for probate.

B. There is no provision in the Probate Code for the determination by the court of attorneys' fees in proceedings to establish the fact of death. No request for fees for services of this character may be included in any probate proceeding relating to the person whose fact of death is determined. Where, however, proceedings are necessary to establish the fact of death of a person who predeceased the decedent, a fee for extraordinary attorney's services may be proper in connection with administration of the latter decedent's estate.

C. A petition to establish the fact of death must be filed in a proceeding in the name of the deceased person whose interest is to be terminated, and the petition will not be acted upon if it is filed in any other proceeding.

D. A petition to establish the fact of death will be set for hearing at the time of filing unless otherwise requested by the person filing the petition.

E. In proceedings to establish the fact of death, the judgment may recite that the interest of the deceased person in the property has terminated. Recitals as to vesting of title must not be included.

F. A petition to establish the fact of death of an individual under Health & Safety Code section 103450 is a separate proceeding from the petition identified in A., above. Upon filing a petition under Health & Safety Code section 103450, a hearing will be set not less than five nor more than 10 days after the filing of a petition.

G. The court may make an order on the petition filed under F., determining the death did in fact occur at the time and place shown by the proofs adduced at the hearing. The order must be made in the form prescribed and furnished by the State Registrar, and will become effective upon a filing of a certified copy with the State Registrar.

H. Petitions to establish the fact of birth or marriage under Health & Safety Code section 10340 are set in the same manner as F.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 10

INDEPENDENT ADMINISTRATION

Rule 4.10.1

Independent Administration

When a personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act (beginning at Prob. Code, § 10400), a Notice of Proposed Action will be required for the sale of a mobile home value at or above \$50,000.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 11 MISCELLANEOUS PETITIONS

Rule 4.11.1

Petition for Instructions

A. The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute.

B. Petitions for Instructions may not be used to determine the manner in which a probate estate should be distributed. A direction of the court regarding distribution of a probate estate will only be furnished pursuant to a Petition for Distribution or a Petition to Determine Entitlement.

C. The petitioner must set forth in the petition the specific instructions which petitioner believes the court should give.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.11.2

Petition to Determine Title to Real or Personal Property (Prob. Code, § 850)

Petitions filed pursuant to Probate Code section 850 will be set for hearing at least 40 days from the date of filing. If difficulties in effecting personal service are anticipated, a later hearing date may be obtained from the clerk so as to avoid continuances.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.11.3

Petition to Determine Persons Entitled to Distribution (Prob. Code, §§ 11700-11705)

A. Petitions under Probate Code section 11700 may be filed to resolve issues relating to the determination of persons entitled to distribution of the decedent's estate. Such issues include, but are not limited to, the identification of heirs or beneficiaries, the interpretation of the will, and the characterization of assets as estate assets. (The term "person" is defined in Prob. Code, § 56.)

B. A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

C. When a determination of persons entitled to distribution is requested in a petition for distribution, notice must be given in the same manner as required when a separate petition under Probate Code section 11700 is filed.

D. When a determination of persons entitled to distribution is requested and it appears that there may be an escheat, notice of hearing and a copy of the petition must be sent to the Attorney General. If any of the heirs are unknown in the petition for probate, then there will be a presumption of possible escheat and notice to the Attorney General is required.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.11.4

Petition for Family Allowance (Prob. Code, §§ 6540-6545)

A. Ex parte petitions for family allowance may be made during the six-month period following the qualification of personal representative if an inventory has not been filed. Consent to the allowance or waiver of notice of the personal representative must accompany the ex parte petition when the petitioner is not the personal representative. Ex parte orders for family allowance may be made for a period commencing with the date of death and continuing for a period not to exceed 12 months.

B. If an application for family allowance is made more than six months after the qualification of the personal representative, or after the inventory is filed, or is a petition for a second or additional allowance, a petition may not be filed ex parte and the petition must be set for hearing and required notice must be given.

C. The petition for family allowance must set forth, (1) the nature of estate assets and estimated value of the estate, (2) an itemized estimate of the recipient's monthly expenses, and (3) the estimated value of the recipient's other property and estimated income. Where the itemized expenses show payments of loans secured by real or personal property, the vesting of title to the property must also be set forth in the petition.

D. All orders for family allowance will be limited to a definite period and must provide for the allowance to be "for _____ months from the date of the order or until further order of the court, whichever occurs first."

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.11.5

Petition for Authority to Operate a Business, (Prob. Code, § 9760)

A. The court may direct that at least 15 days' notice be given to the three largest creditors of the business and to the beneficiaries of the estate when the personal representative petitions for authority to continue the operation of the decedent's business.

B. The court may prescribe any reasonable notice. A separate order prescribing notice must be obtained ex parte before the petition is filed.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.11.6

Petition for Authority to Borrow (Prob. Code, §§ 9800-9807)

A. Petitions for authority to borrow money must set forth the amount of the bond in force and the amount of the loan proceeds. If no additional bond is required, or if bond is waived, that fact must be alleged.

B. If a loan is to be secured by the property of the estate, an inventory for that property must be on file prior to the hearing.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.11.7

Petition for Authority to Retain an Attorney

A. A petition for authority to retain an attorney to pursue litigation must contain an allegation regarding counsel to be retained, the hourly rate or contingent fee agreement, the service to be provided, and a prospective amount that will be required for litigation.

B. If it appears that additional funds will be required over the amount allowed by the court on the initial petition, a subsequent petition must be set for hearing requesting an additional amount including the necessity for further funds, the amount spent to date, and for what services.

C. The Petition must be accompanied by a declaration by counsel detailing why the fees are properly a charge against the estate or trust, rather than a personal charge against the Petitioner. See *Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221 and *Terry v. Conlan* (2005) 131 Cal.App.4th 1445.

(Adopted 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.11.8

Joinder in Pleadings

A. Any interested party in an action before the Probate Court may indicate his or her endorsement of all opinions and positions taken in the previously or contemporaneously filed pleading of another party (the "Joined Pleading") by filing and serving a verified "Joinder in Pleading" prior to the hearing on the matter. The Joinder in Pleading must identify the party endorsing the Joined Pleading, the exact title of the Joined Pleading, and the filing date of the Joined Pleading if applicable.

B. The filing of a Joinder in Pleading indicates the endorsing party's adoption of the entire Joined Pleading, without exception. To bring additional facts, issues or other matters before the court, the endorsing party must file a separate or supplemental pleading. The endorsing party must give notice to all persons entitled to notice of the original Petition, and their attorneys of record, in the same manner as required for an original pleading. A party served with such Joinder in Pleading may move, demur, or otherwise plead to the Joinder in Pleading in the same manner as to an original pleading.

C. The Joinder in Pleading must be served upon all parties and interested persons as evidenced by a Proof of Service filed with the court prior to the hearing on the Joined Pleading. If it is the endorsing party's first appearance in the action, the endorsing party must pay the appropriate first appearance fee upon filing the Joinder in Pleading.

(Adopted 1/1/2006)

Rule 4.11.9

Substituted Judgment and Community Property Transactions

Absent good cause, an attorney, or a guardian ad litem, must be appointed for the Conservatee or incapacitated spouse in all proceedings pursuant to Probate Code section 2580 et seq., and section 3100 et seq. The attorney, or guardian ad litem, shall include in their report to the court recommendations, if appropriate, relative to the ultimate testamentary disposition of the involved assets.

(Adopted 1/1/2007)

Rule 4.11.10

Petition for Transfer

All orders transferring a probate matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008)

CHAPTER 12 CREDITOR'S CLAIMS

Rule 4.12.1

Notice to Creditors

A. Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478 and Probate Code section 9050. This notice must be filed with the court prior to or with the filing of a petition for distribution.

B. In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and *Tulsa*. (See Rule 4.15.4.)

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 4.12.2

Filing Creditors' Claims

Counsel are advised to review the court file for creditors' claims prior to filing the final accounting. (See Prob. Code, § 9250.)

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.12.3

Creditors' Claims of Personal Representatives or Counsel

A. The creditor's claim of a personal representative or counsel for the personal representative must be timely filed with the court. A separate notation must be attached to the face of the claim indicating that the claim requires specific court action.

B. A blank allowance or rejection form must be attached for the court's action, with copies to be returned to counsel.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.12.4

Payment of Claims and Debts

A. Other than those creditors' claims ordered paid by the court, the personal representative may defer payment of claims until settlement of an account.

B. The personal representative may timely pay any debts that are just and reasonable subject to later approval by the court under Probate Code section 11005, which approval must be supported by appropriate evidence required by that section.

Payment pursuant to Probate Code section 11005 assumes that the debt is undisputed and the estate is solvent. Prudence may dictate caution before paying such claims.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.12.5

Special Creditors' Claims

A. Funeral expenses must be reasonable and interest is allowed on such claims commencing 60 days after the date of death.

B. Public entities' creditor's claims are governed by Probate Code section 9200 et seq., and may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

C. Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 13 SALES

Rule 4.13.1

Publication of Notice of Sale of Real Property

A. Unless one of the exceptions mentioned in Probate Code sections 10301-10303 apply, a publication of notice of sale of real property is required. A discretionary power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the will so provides.

B. The notice of sale of real property must set forth the street address or other common designation of the property, if any, or if there is none, the legal description.

C. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed.

D. If a fiduciary publishes a notice of sale of real property, the property must be sold pursuant to such publication.

E. If notice of sale is published, any sale must be in accordance with its terms. There cannot be a variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

F. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale and filing of a new return of sale.

G. In conservatorships, notice must be given to the conservatee as well as to any person requesting special notice. In guardianships notice must be given to any ward age 12 or older.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.13.2

Vesting of Title to Property

A. The court will not confirm a sale to a "nominee" or "assignee", only to the actual buyer.

B. In a conservatorship or guardianship, a statement must be made whether or not the purchase of the real property has been made by a person with a family or affiliate relationship to the conservator or guardian as defined by Probate Code sections 2359 and 2403.

C. In a conservatorship or guardianship, a statement must be made whether or not there is a family or affiliate relationship between the conservator or guardian and any agent hired by them as defined by Probate Code sections 2359 and 2403.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.13.3

Bond on Sale of Real Property

A. Petitions for confirmation of sale of real property must set forth the amount of bond, if any, in force at the time of the sale, the amount of property in the estate which must be covered by bond subsequent to the sale, including proceeds of sale (cash and any note taken back by estate), and the probable annual income from remaining property. If no additional bond is required, or if bond is waived, such facts must be alleged.

B. Where an additional bond is required, the personal representative must file an additional bond, rather than a substitute bond, and it must be filed with the order confirming the sale.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.4

Exclusive Listings for the Sale of Real Property

A specific commission percentage will not be approved by the court as part of the exclusive listing agreement. All commissions are determined at the confirmation hearing.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.5

Commissions on Sale of Real Property

A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may not allow a commission in excess of

five percent (5%) on improved property or ten percent (10%) on unimproved property absent good cause shown for a larger commission.

B. The court must be advised whether the broker is, or has any interest in, the purchaser. (See Prob. Code, § 10160.5.)

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.13.6

Sale of Real Property When Buyer Assumes Encumbrance: Necessity for Minimum Deposit

A. A sale of real property may not be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The petition must set forth the facts pertinent to such assumption agreement.

B. The court requires a ten percent (10%) deposit be made prior to confirmation on any sale of real property.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.7

Sale of Specifically Devised Property

The sale may not be approved without the specific beneficiary's consent unless the court finds good cause for approval without the consent.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006)

Rule 4.13.8

Personal Property Must Be Appraised Before Sale

Sales of personal property may not be approved as sales of depreciating property, or confirmed, unless the property has been appraised. When necessary, a partial inventory and appraisal or a letter of appraisal obtained from the probate referee may be filed for this purpose.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.9

Sales of Mobile Homes

The court may approve sales of mobile homes as depreciating property. The petition for approval must set forth the efforts made to expose the property to the market.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.10

Sales of Securities

A. Commonly traded securities need not be appraised before the sale may be authorized.

B. In petitions for sales of listed securities, the specific exchange on which such securities are traded must be set forth.

C. In petitions for sales of unlisted securities, the recent bid and asked prices must be set forth.

D. Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

E. If securities are "closely held," the petition must furnish the basis (by appraisal or otherwise in the discretion of the court) for fixing the minimum sales price.

F. The order authorizing the sale of any bond or unlisted stock (other than a mutual fund) must provide that the sale must be at not less than a specified amount per unit.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.11

Overbids

If the overbid is on terms different from the terms of the returned sale, the offer may be considered only if the personal representative, prior to confirmation of the sale, informs the court in person or by counsel that the offer is acceptable.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.13.12

Increased Bid Forms

When there is a successful overbid in open court on a sale of real property, an “Increased Bid in Open Court” (SDSC PR-065) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective.
(Rev. & Renum. 7/1/2001; Rev. & Renum. 1/1/2006)

Rule 4.13.13

Allowance of Commissions Upon Overbid

When sale is confirmed upon an overbid and a real estate commission is involved, it is the duty of counsel for the estate to compute the commission pursuant to Probate Code section 10164 or 10165 and any allocation thereof between brokers per any agreement they may have, and to report the same to the court for its approval and inclusion in the court's minute order.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 14 INVENTORY AND APPRAISAL

Rule 4.14.1

Preparation of Inventory and Appraisal

A. With the exception of specific sums of cash, all specifically bequeathed personal property owned by the decedent on the date of death must be itemized and separately appraised on the Inventory.

B. An Inventory of real property must include the following information:

1. Complete legal description;
2. Common address;
3. Assessor's Parcel Number;
4. Description of type of property (i.e., single family residential, multi-family residential, commercial, industrial, agricultural timber, mining, mineral interests, unimproved land).

C. The Inventory must not include any asset which is not an asset of the estate, such as:

1. Insurance proceeds payable to named beneficiaries.
2. Individual retirement accounts payable to named beneficiaries.
3. Trust assets which pass by trust terms, including Totten Trusts.
4. Assets held in joint tenancy.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.14.2

Correcting Inventory and Appraisal

A. If, before filing the Inventory with the court, a mistake is found, the personal representative may make changes to Attachment No. 1. However, any changes to Attachment No. 2 must be made by the probate referee.

B. If a mistake is found after filing the Inventory with the court a Corrected or Amended Inventory must be filed to correct the error.

C. If a change to Attachment No. 2 is necessary after it has been filed with the court, the correcting Inventory must be signed by the probate referee.

D. If a change to Attachment No. 1 is necessary, a Correcting Inventory may be signed only by the personal representative.

E. Only items being corrected are described on a Corrected Inventory and Appraisal.

For example:

Item

No.	Description	Appraised Value
------------	--------------------	------------------------

4.	Item 4 was previously described as: 400 shares XYZ common stock	
----	---	--

	Item 4 is correctly described as: 300 shares XYZ common stock	
--	---	--

	Previously appraised value: \$4,000.00	
--	--	--

	Correct appraised value: \$3,000.00	
--	-------------------------------------	--

Change in appraised value: (\$1,000.00)

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.14.3

Petition for Waiver of Appraisal by Referee

When no referee has been designated for the case, 15 days notice of the filing of a petition for waiver of appraisal by referee must be given to the referee designated by the San Diego Probate Referees to represent them, in the same manner as would be given to a referee designated for the case.

(Adopted 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

CHAPTER 15 ACCOUNTS AND REPORTS

Rule 4.15.1

Required Form of Accounts

A. Accounting values of assets must not be changed to reflect fair market value, but fair market value may be set forth separately in the report or account.

B. Dispositive provisions of the Will, if any, must be set forth in the Final Accounting.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.15.2

Bank Letters and Statements

A. All interim accounts by individual fiduciaries must be supported by bank statements or financial statements verifying the balances of accounts at financial institutions as of the closing date of the accounting. The statements must be the originals, must show the vesting of the account, date of balance and the amount of balance. If a financial institution will not produce records required by this rule, petitioner must submit a declaration setting forth the due diligence efforts undertaken to obtain the required records.

B. The appropriate balance must be clearly highlighted or otherwise marked.

C. Balances shown in the accounting, if different, must be reconciled to the letters or statements.

D. Bank or financial statements containing personal information that would not otherwise be kept in a public file (i.e. social security number) must be filed under a separate pleading marked "Confidential Bank and/or Financial Statements." Bank or financial statements substantiating accountings by a private professional or licensed guardian or conservator must be lodged with the court until the date of the hearing at which the account is approved. The court may return the statements to the tendering party to hold until the account becomes final. These statements must be marked "Confidential Bank and/or Financial Statements for Accounting Purposes" and follow local rule 4.3.2 for lodging documents.

E. For purposes of this section, "institutions" is defined in Probate Code section 2890, subdivision (c).

F. For purposes of this section, "financial institutions" is defined in Probate Code section 2892, subdivision (b).

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.15.3

Allegations Re: Claims

The report accompanying any accounting or waiver of accounting must include the following information:

A. Whether any Notice of Administration was given to creditors within the last 30 days of the four-month statutory creditors' claim period and a complete listing of the creditors to whom such notice was sent, including the date mailed, to allow the court to determine the expiration of the creditors' claim period. This allegation is also necessary in petitions for preliminary distribution. (See Prob. Code, § 9051.)

B. If all Notices of Administration were given prior to the last 30 days of the four-month statutory claims period, an abbreviated statement noting that the requirements of Probate Code section 9050 were met is sufficient.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.4

Reporting Payment of Debts

Although a verified claim has not been filed, the court may approve payment of a debt. Such court approval is discretionary and may be granted pursuant to Probate Code section 11005 upon the basis of the following allegations in the verified petition and report:

- A. Identification of the creditor, the amount and the date paid;
- B. The debt was justly due from the decedent's estate;
- C. The debt was timely paid in good faith;
- D. The amount paid was the true amount owed by the decedent and was reasonable; and
- E. The estate is solvent.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.15.5

Property to be Distributed Must Be Listed

A. The petition for distribution must list and describe in detail all property to be distributed, including cash on hand.

B. The description of promissory notes must indicate whether they are secured or unsecured; if secured, the security interest must be described.

C. Real property descriptions must include a complete legal description and street address and Assessor's Parcel Number.

D. The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting and incorporated in the petition by reference.

E. Description by reference to the inventory is not acceptable.

F. The value of each individual asset on hand and the total value of the assets must be set forth.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.6

Allegation Re: Character of Property

A. A petition for distribution must contain an allegation regarding the character of the property, whether separate, quasi-community or community.

B. An allegation regarding community or quasi-community property of the decedent must state whether the interest is the decedent's one-half or the entire community or quasi-community property of both spouses.

C. Unless the surviving spouse elects to include his or her interest in the probate estate pursuant to Probate Code section 13502, the court has no jurisdiction to order distribution of such interest or to order statutory fees based upon the value of such interest.

D. The court will authorize filing of a late election only upon showing of good cause.

(Adopted 1/1/1990; Rev. 7/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.7

Compliance with Notice -- Medi-Cal and California Victim Compensation and Government Claims Board

Before the court will authorize distribution, there must be a showing of compliance with notice requirements of Probate Code section 9202 to:

A. The Director of Health Services or a showing that the notice thereunder is not required because neither decedent nor predeceased spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child.

B. The Director of the California Victim Compensation and Government Claims Board or a showing that the notice thereunder is not required because an heir is not confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm or other local correctional facility.

C. The Franchise Tax Board, for estates for which letters were issued on or after July 1, 2008.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.15.8

Vouchers

Vouchers supporting accounts are not to be filed with the clerk unless the court specifically orders them filed.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.15.9

Damages for Wrongful Death and for Physical Injury of Decedent

A. Damages for wrongful death, as distinguished from physical injury and property damage, are held by the personal representative on behalf of the statutory beneficiaries of the decedent's estate and are not part of the estate.

B. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise. Notice of said petition must be mailed by the personal representative. This procedure is applicable to any action by the personal representative under federal as well as state law.

C. Damages and costs arising out of the physical injury to the decedent or property damage, as distinguished from wrongful death, must be held by the personal representative as the property of the estate and must be inventoried.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.15.10

Notice to Prior Representative or Counsel

If there has been a change of personal representative or a substitution of counsel, notice of hearing must be given to such prior representative or counsel of any petition in which fees or commissions are requested by the present personal representative or counsel unless:

A. A waiver of notice executed by the prior personal representative or counsel is on file; or

B. An agreement on the allocation of fees and/or commissions is on file or included in the petition; or

C. The file and the petition demonstrate that the fees and/or commissions of the prior personal representative or counsel have been provided for and allowed by the court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.15.11

Petition for Authority to Continue Administration

Requests for authority to continue the administration of an estate must be made by a status report. The court will limit the extension to a period not to exceed 12 months from date of the order. The court may require an accounting before approving a subsequent extension request. Refer to section 12201 of the Probate Code for notice requirements.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 16 FEES AND COMMISSIONS

Rule 4.16.1

Office and Travel Expense

A. Ordinary office expenses and travel incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

1. An exception may be made for the reasonable expenses of fiduciaries for travel on estate business.

2. For good cause shown, the court may allow office expenses such as photocopying, express mail, postage, or long distance phone expense, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fees and work required in administration of the estate.

B. Travel and office expenses appearing in any account must be explained in the report.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 17 DISTRIBUTION

Rule 4.17.1

Distribution to Minor

When a beneficiary is a minor or a disabled adult, the court requires the following documents to be filed in conjunction with the accounting and petition for final distribution:

A. A certified copy of the Letters of Guardianship or Conservatorship when distribution is to be made to the guardian of the minor or a disabled adult.

B. The written assurance of a parent that the minor's estate, including the bequest, does not exceed \$5,000 when distribution is made pursuant to Probate Code section 3401.

C. The consent of the custodian to act if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Prob. Code, § 3900 et seq.).
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.17.2

Distribution Under Probate Code Section 13101 Affidavit

If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.17.3

Blocked Accounts

In any case in which funds are to be placed in a blocked account, Rule 4.7.11 of these rules must be followed.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.17.4

Distribution to Deceased Beneficiary

When an heir or beneficiary dies during administration of an estate, the decree must provide for distribution to the personal representative of the estate of the heir or beneficiary, pursuant to Probate Code sections 11801 and 11802, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.17.5

Assignment of interest in Estate

When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding and may require that the consideration paid for the assignment be set forth. The court will require additional information to assure that the assignor fully comprehends the effect of the assignment that it was voluntarily made and was not grossly unreasonable. The terms of said assignment will be set forth in the Order for Distribution as set forth in Rule 4.7.2, *infra*.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.17.6

Preliminary Distribution Bond

A. If a preliminary distribution is made before the time for filing creditors claims has expired, a bond must be furnished by the distributees.

B. When a bond is not required by the court, the order must include a finding that the time for filing or presenting claims against the estate has expired and that all uncontested claims have been paid or are sufficiently secured.

C. An allegation and showing will be required concerning notice to any additional known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478. Unless such notices have been given, the time to file claims will not be considered to have expired and the court will impose a bond upon each distributee of the preliminary distribution.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 4.17.7

Receipts on Preliminary Distribution

Receipts for property received in Preliminary distributions must be filed with the court before the final account, and follow the requirements of Rule 4.17.8.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 4.17.8

Receipts on Final Distribution

A. Receipts for property received on final distribution must be signed by the (1) distributee, unless there is a showing of good cause why the distributee cannot sign the receipt, (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney is in full force and effect, or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

B. A receipt must be specifically itemized, giving the valuation of each asset and the total value of all the property received.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.17.9

Order of Final Discharge

The court will not sign the order of final discharge until all receipts on distribution are filed and all remaining property withheld from distribution is properly disbursed and/or distributed by the personal representative as alleged in a separately filed declaration.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.17.10

Requests to Withhold Funds from Final Distribution

In every case where the Petitioner requests to withhold \$10,000 or more, the Petitioner must specify the items for which the withholding is required, together with an estimate of each item.

(Adopted 1/1/2006; Rev. 1/1/2009)

Rule 4.17.11

Supplemental Accountings with Final Discharge

Unless the accounting is waived by the heirs or beneficiaries, supplemental accountings must be submitted for review when more than \$2500 and less than \$10,000 is withheld at the time of the final accountings. For withheld amounts of \$10,000 or more, the court will set a review date to ensure that a supplemental accounting has been filed and set for hearing. Notice of the hearing on the supplemental accounting must be given to all persons entitled to notice of the hearing of Final Accounting. The starting balance of the supplemental accounting must be for the amount withheld only.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/200; Rev. 1/1/2009)

CHAPTER 18 CONSERVATORSHIPS

Rule 4.18.1

Conservatorship Orientation Program

All conservators, excluding limited conservators of the person, who are not Private Professional Conservators as defined by Probate Code section 2341, must complete an education class as ordered at the time of their appointment as conservator. Classes must be completed within six months of appointment as a conservator, and a certificate evidencing completion must be filed with the court. Classes must be designed to explain the duties and responsibilities of Conservator of the Person and/or Estate and include information on healthcare, safety, living arrangements, management of assets, accountings and other legal obligations. A list of providers is available in the Probate Business Office. Failure to complete this requirement may be grounds for removal as ordered by the court. In addition to removal, failure to comply with these requirements may result in the imposition of sanctions.

(Adopted 1/1/2006)

Rule 4.18.2

Temporary Conservatorships

A. The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five day notice requirement unless proper showing is made as follows:

1. Good cause and an immediate necessity is affirmatively shown in a declaration containing competent evidence based on personal knowledge;

2. The proposed conservatee is present or if the proposed conservatee is unable to attend;

a. the proposed conservatee is hospitalized, has notice of the ex parte hearing and its purpose, and cannot attend for medical reasons that must be supported by a physician's declaration;

b. evidence is presented that the proposed conservatee has notice of the ex parte hearing and its purpose and cannot appear; or,

c. in appropriate circumstances where capacity is not an issue, the proposed conservatee has consented and waived notice.

3. There are no relatives in equal or closer relationship than the petitioner, or such relatives nominated or consented to petitioner's appointment.

4. Petitioner must state in the Ex Parte Application whether there are known objectors.

a. If there are known objections, absent good cause, the matter will be set for a noticed hearing; or

b. If the petitioner desires to proceed without notice to a known objector, the petitioner must demonstrate by competent evidence the need to waive notice based on good cause.

5. Unless good cause is shown, the report of a court appointed attorney is on file.

6. Absent good cause, 24-hour notice has been given to the proposed conservatee's spouse or domestic partner, and all relatives within the second degree.

7. In matters where the application is made primarily to make health care decisions a declaration is on file by petitioner and court appointed counsel setting forth reasons why temporary conservatorship is more appropriate than proceeding under Probate Code section 3200 et seq.

B. If it appears that a temporary conservator is necessary, but that notice should be given to the proposed conservatee or any other person, the petition will be set for the first conservatorship calendar not less than five days away and should be walked through Probate Examining by counsel to assure proper setting.

C. No initial appointment of a temporary conservator may exceed a period of 30 days, but such appointment may be extended by the court to the date of the hearing on the permanent conservatorship. If a continuance of the hearing on the general conservatorship petition is necessary, counsel may appear at the hearing and request the extension of the temporary conservatorship. Alternatively a request to extend may be made ex parte, if the request is presented before the expiration of the initial appointment and there are no objections.

D. Good cause must be shown for special powers to be granted without a hearing. When special powers are sought, they must be specifically requested and supported by factual allegations.

E. Good cause is defined as those circumstances where it is essential to protect the proposed conservatee, or the proposed conservatee's estate, from immediate and substantial harm.

F. Whenever an ex parte temporary conservatorship is sought and a waiver of notice is requested, or presence of the proposed temporary conservatee is not excused by statute, it must be accompanied by a proposed order which includes factual findings reflecting the substantial harm posed to the proposed conservatee, or the proposed conservatee's estate.

G. The court must set a review hearing within six court days whenever an ex parte temporary conservatorship is granted. The court may reconsider the propriety of the temporary conservatorship, or other matters as appropriate, at the review hearing.

H. A petition for appointment of a temporary Conservatorship of the person or estate or both must be made in a separate pleading. It may not be included in, and may not be filed prior to the filing of, the petition for appointment of a permanent conservator.

I. All petitions for temporary conservatorship must be submitted with an extra copy of the petition and all related documents for the Court Investigator.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.3

Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information

A. All petitions for appointment of conservator must state whether or not there is presently a conservator appointed under the Lanterman-Petris Short Act ("LPS") and, if so, the number of the Mental Health action, the name of the conservator, when the conservatorship expires, and that court's findings regarding the proposed conservatee's ability to complete the affidavit of voter registration.

B. If an LPS conservatorship exists, notice must be given to:

The LPS conservator;

Counsel representing the LPS conservatee; and

All persons otherwise required by Probate Code section 1460 et seq.

C. When the conservatee has a spouse, the petition must allege whether any property is community property. If community, the petition should state what portion is to be included in the conservatorship. (Prob. Code, § 3051.)

D. Children and grandchildren are relatives within the second degree. The petition must allege the existence or the nonexistence of any children or grandchildren and must list their names, addresses, relationship to the proposed conservatee, and whether they are minors or adults (e.g., "John Smith, adult grandchild," or "John Smith, grandchild age 13").

E. Unless the petitioner is a bank, any petition for appointment must be accompanied by the forms required by the California Rules of Court, rule 7.1050, Investigator Referral and, the Duties and Liabilities form. The petition will be rejected for filing if required forms are not submitted with the petition. A copy of such forms must also be

filed for the Court Investigator who must review the allegations in the supplemental information. A temporary appointment will not be made unless the petition for permanent conservatorship which is to be filed is accompanied by such supplemental information.

F. Any petition for appointment of conservator must disclose whether the proposed conservator is a private professional conservator (PPC), their current licensing status, the expiration date of their current registration and their state license number.

G. The Petition for Conservatorship must state, with specificity, evidence to support a finding of lack of capacity to make decisions or do other acts as required by Probate Code section 811. The petition should set forth evidence attesting to a deficit in at least one of the mental functions set forth in Probate Code section 811. This evidence may, however, be set forth in a separate declaration attached to the petition.

H. When the proposed conservatee is, or was, the subject of a guardianship, the “Petition for Appointment of a Conservator” must include the case number of the prior guardianship, the name of the prior guardian(s), and the name(s) of the attorneys for the prior guardian(s) and ward, if any.

I. When the petitioner, or the proposed conservator, also serves as the trustee of a trust in which the conservatee has a beneficial interest, the existence of the trust, and the petitioner or proposed conservatee’s status and interest therein must be disclosed in the petition.

J. The Petition for Conservatorship must state, with specificity, evidence to support a finding that petitioner has standing pursuant to Probate Code section 1820. The court generally considers an “interested person” and/or “friend” to include the proposed conservatee’s physician, accountant, stockbroker, neighbor, or other such acquaintance. (Prob. Code, § 1820, subd. (a)(5).) Where petitioner’s relationship to the proposed conservatee may not confer standing sufficient to meet this criteria, notice of the proceedings shall be given to the Public Guardian.

K. Whenever the petitioner is not a family member a separate verified declaration containing the following information must be submitted:

1. The due diligence efforts of the petitioner to locate family members, friends and neighbors, and to ascertain the proposed conservatee’s preferences in appointing a conservator, or explain why it was not feasible to do so.

2. The efforts of the petitioner to discuss with family members and friends the proposed conservatee’s preferences in appointing a conservator.

3. A description of the petitioner’s prior relationship, and contacts with, the proposed conservatee. If the petitioner was not nominated by a relative, or the proposed conservatee, the petitioner must set forth the specific circumstances under which he or she became involved with the proposed conservatee.

L. When filing a petition for the appointment of a conservator or successor-conservator, the petitioner must file an extra copy of the petition and all subsequent documents regarding the petition for use by the Court Investigator.

(Adopted 1/1/1990; Rev. 1/1/1991; 7/1/1996, Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.4

Reserved for Future Use

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2007; Del. 1/1/2009)

Rule 4.18.5

Capacity to Give Informed Consent for Medical Treatment

A. Any petition seeking a determination that the proposed Conservatee lacks capacity to give informed medical consent must contain facts to support the finding and must be accompanied by a declaration of a licensed physician, or, where appropriate, an accredited practitioner, as to Conservatee’s lack of capacity to consent to medical treatment.

B. Medical authority for a limited conservator is granted pursuant to Probate Code section 2351.5, not Probate Code section 2355, and the Petition for Limited Conservatorship may not ask for 2355 authority.

C. If the conservatorship petition is premised on the need to exercise medical authority, the petitioner must explain why a Probate Code Section 3200 Petition is not the least restrictive alternative.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 4.18.6

Dementia Authority

A. A request for dementia authority per Probate Code section 2356.5 may be contained in the petition for appointment of conservator, a petition for exclusive medical authority, or in a petition asking only for dementia authority.

B. A petition for appointment of conservator which includes such request must be a petition for appointment of conservator of the person, must also include a request for exclusive medical authority and must have sufficient specific examples and allegations to be clear and convincing evidence of dementia as defined by the last edition of Diagnostic and Statistical Manual of Mental Disorders (DSM IV).

C. A Capacity Declaration – Conservatorship (GC-335) and Dementia Attachment (GC-335A) must be filed in support, but must address each required finding per Probate Code section 2356.5, subdivision (f)(3), and therefore an additional declaration of physician may be furnished.

D. A request for dementia authority can be contained in a petition for exclusive medical authority if there is a conservator of the person in place.

E. A request for dementia authority only can be the subject of a petition where there is already a conservator of the person who has exclusive medical authority.

F. Counsel will be appointed to represent the conservatee or proposed conservatee in any case where dementia authority is requested and a written report from that attorney must be filed five days in advance of the hearing before the court acts on the dementia request. (See also Rule 4.18.12.)

G. A request for placement in a secured facility must indicate the specific facility and a showing it is the least restrictive placement available.

H. A request to authorize medications must show the specific medications currently prescribed, however no further relief will be required if changes to medication are required.

I. Dementia authority will not be granted where the petitioner is the proposed conservatee as there is a conflict in a person having sufficient capacity to file a petition and the court finding dementia per DSM IV.

J. The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority and an additional "Order Prescribing Notice" need not be submitted.

K. A Petition for exclusive medical authority which includes dementia authority, or a petition for dementia authority, requires an order prescribing notice. The court will require 15 days notice, with a copy of the petition, to the conservatee, conservatee's spouse, domestic partner, and relatives in the second degree. An "Order Prescribing Notice" need not be submitted in addition to the requirements of this subsection.

(Adopted 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.18.7

Independent Powers: Sale of Residence

A. The court will grant individual powers as authorized by Probate Code sections 2590 and 2591 only in response to specific allegations regarding their necessity.

B. Where power is granted to sell real property, the court requires that the sale be returned to the court for overbidding and confirmation. If independent power of sale of real property is requested, an allegation must be made whether the real property is conservatee's residence, as described in Probate Code section 2540.

C. The independent powers granted must be set forth in the order and in the letters of conservatorship.

D. If conservatee's present or former residence, including a mobile home or recreational vehicle, is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

E. The court will consider the petition for authority to sell a residence on an ex parte basis, upon showing of immediate need, if there are no requests for special notice or if the persons requesting special notice waive notice and it is shown the conservatee does not object or does not have the capacity to object.

(Adopted 1/1/1990; Rev. 1/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.18.8

Consent of Conservator to Act

When a proposed conservator is not petitioning, written consent of the proposed conservator to act must be on file before the appointment is made.

(Adopted 1/1/1990; Rev. 7/1/1991; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.18.9

Court Investigation/Response to Court Investigator's Report

A. Unless an exception to the general requirements regarding a Court Investigator's Report applies (i.e. as provided in California Probate Code sections 1826, 1848 or other appropriate section), a Referral for Court Investigator must be filed with the Petition for Appointment of Probate Conservator.

B. No Order Appointing Court Investigator is required because the court has made a general order appointing the court investigators for all cases.

C. If it is alleged that the petitioning or nominating proposed conservatee will attend the hearing, but before the hearing becomes unable or unwilling to attend, the petition must be supplemented, and the referral must be filed. Counsel must call the Court Investigator to alert him or her of the need for an investigation. If this is not accomplished at least ten days before the hearing date, a continuance ordinarily will be required.

D. Petitioner must cooperate with the Court Investigator in the preparation of a Court Investigator's Report and must use all reasonable efforts to timely provide appropriate information as requested by the Court Investigator.

E. When an investigator's report or report of the court appointed attorney for the conservatee is mailed to counsel and/or the conservator subsequent to the establishment of the conservatorship, the conservator must promptly file a report responsive to the concerns addressed by the investigator or court appointed attorney.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.10

Limited Conservatorships

Upon a petition for appointment of limited conservator, and under proper circumstances, the court may appoint a general conservator for a developmentally disabled person.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.18.11

Bond Requirements

A. Cash may be blocked as provided in Rule 4.7.11, and such blocked funds excluded from the bond amount.

B. Bond Review Hearing. If, at the hearing for the appointment of a temporary or permanent conservator of the estate, the proposed conservator does not have sufficient information regarding the proposed conservatee's income or assets to enable the court to set an appropriate bond, the court may appoint the temporary or permanent conservator and continue the hearing to a specified date so that the conservator can provide the required information and a proper bond can be set. Where appropriate, the court may place limitations on the letters of conservatorship until a proper bond has been posted. This rule also applies to appointments of guardians of the estate.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.18.12

Appointment of Counsel for Conservatee or Patient

A. The court will appoint counsel for the person who is the subject of a conservatorship petition as required by law or for good cause

B. Counsel appointed by the court to represent conservatees must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

1. Make a recommendation as to the issues at hand.

2. Document the services performed by counsel.

3. Include a fee request in the prayer.

4. Include a recommendation regarding the ability or inability of the conservatee or proposed conservatee to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by such conservatee or by the County of San Diego.

5. Make a recommendation whether or not counsel may be discharged. In the case of an appointment under Probate Code section 2356.5, counsel will not be discharged.

6. State that Counsel has reviewed Rule 4.21.7 herein regarding conflict of interest in a conservatorship proceeding.

7. State that Counsel has met the qualifications and continuing education requirements pursuant to California Rules of Court, rule 7.1101.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.18.13

Successor Conservator

Appointment of a successor conservator does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or an 811 declaration per Rule 4.18.3, subsection G. Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. The investigator must interview the conservatee and file a report before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least 15 days prior to the hearing, and other notice given pursuant to Probate Code section 2683.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.18.14

Conservatorship Assessments

Probate Code section 1851.5 provides that an assessment will be made against the estate of each conservatee for the cost of any investigation made by the Court Investigator under appropriate statutes. The assessment for investigations by the Court Investigator is set by the court. The assessment is due and must be paid immediately upon receipt of the investigator's report. The probate examiner will routinely check for the payment of assessments when any petition in a conservatorship is before the court and no order will be processed until all assessments are paid unless the court grants a request to defer payment for good cause shown.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.18.15

Investments by Conservator

A. In accordance with Probate Code section 16040, investments by conservators must be prudent and in keeping with the size and character of the conservatee's estate.

B. The court will not approve the following:

1. Unsecured loans.
2. Loans to relatives.
3. Bonds or obligations of foreign governments or corporations.

C. The court will not authorize investments in real estate, either by purchase or encumbrance, unless supported by an appraisal by the court-appointed probate referee or other qualified appraiser.

D. A conservator may continue managing investments specified in Probate Code section 2459, subdivision (b), which pre-existed the conservatorship, but may not make additional investments without court authority. A conservator may petition the court for instructions and authority to make a specific investment, including investments in Certificate of Deposit Account Registry Service (CDARS.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.18.16

Substituted Judgments in Conservatorships Probate Code section 2580

Where the petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the trust must provide, unless otherwise ordered, that the trust is subject to continuing court supervision under the Probate Code. Absent an order of the court to the contrary, all trust assets must remain within the State of California. In the case of securities, cash and other items of intangible personal property, the assets must remain on deposit with an entity registered with the California Secretary of State to do business in California.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.18.17

Accounts and Reports of Conservators

A. All accounts must follow the format prescribed in these rules for decedents' estates and in Probate Code sections 2620 and 1060-1064 and California Rules of Court, rule 7.575, unless ordered by the court.

B. Reports must contain the current address and whereabouts of the conservatee, and describe the conservatee's status and condition.

C. Reports must reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income.

D. The report must also show any blocked bank accounts.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.18.18**Notices**

A. Notice must be given to a former conservatee or the personal representative of a deceased conservatee upon the settlement of the final account.

B. In circumstances where the Conservatee does not have a spouse or domestic partner, or such person is incapacitated, notice must be given to all relatives within the second degree.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009)

Rule 4.18.19**Reserved for Future Use**

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Del. 1/1/2009)

Rule 4.18.20**Reserved for Future Use**

(Del. 1/1/2008)

Rule 4.18.21**Fees for Conservators and Counsel**

A. The court will not grant a fee request without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel's report.

C. Requests for compensation must be set forth in a separate declaration, and must be in accordance with California Rules of Court, rules 7.751 and 7.702.

D. Conservators must submit a completed Probate Court approved "Fee Request Declaration" with all requests for compensation in excess of \$750.00.

E. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Conservators and counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving account.

F. The court may consider fee requests for work performed during the current accounting period, and fees related to the report and accounting for the current accounting period.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.18.22**Required Form of Accounts**

A. The first accounting must be for a period not to exceed one year from the date of appointment.

B. A final account must set forth a list of assets on hand for distribution and the specific proposed distribution. If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution.

C. The final account must allege whether or not all income and other taxes which became due and payable by conservatee during the period of the conservatorship have been paid.

D. In the final account, an allegation must be made as to whether or not the conservatee or predeceased spouse, if any were Medi-Cal recipients and if so, appropriate notice must be given per Probate Code section 215, unless distribution is to a personal representative of a deceased conservatee.

E. In all cases, notice must be given to all persons entitled to receive property.

F. All accounts must disclose the existence of a trust where the conservatee is a vested beneficiary, the current fair market value of the conservatee's interest, whether the conservator is a trustee, whether counsel for the petitioner is also attorney for the trust and/or trustee, and whether fees approved in the account are to be paid from the trust.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.18.23**EADACPA Proceedings**

When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institutions Code sections 15600 et seq., that action will be transferred to the Probate Court for litigation as required by Rule 2.4.10.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 4.18.24

Court Ordered Review Hearings

A. At the hearing approving a Petition for Conservatorship of the Person or Estate, the court will set compliance and review hearing dates as follows:

1. A 90 day compliance date and 120 day review date. The conservator of the Person is to provide proof of the filing with the court of a Level of Care Evaluation (Prob. Code, § 2352.5) and the Notice of Rights of Conservatee (Prob. Code, § 1830) at or before the compliance date. The conservator of the Estate is to file an inventory and appraisal (Prob. Code, § 2610) at or before the compliance date. Upon the filing of the required materials, the review hearing will be taken off calendar. Should the conservator fail to fully comply with the above referenced statutes, the conservator will be required to appear at the review hearing date.

2. A 365 day compliance date and a 395 day review date for Estates. The Conservator of the Estate is to file the account prior to the compliance date. This report is to coincide with the Court Investigator's Report (Prob. Code, § 1850, subd. (a)(2)). Upon the filing of the account, the review hearing will go off calendar. Upon review of the Court Investigator's Report, the court may pre-approve the Report and set the date for the next review hearing; an appearance will not be required.

B. If the materials required by paragraph A above have not been filed by the date ordered by the court, the conservator and counsel, if any, must appear at the review hearing and must show cause why the conservator should not be suspended, removed, or otherwise sanctioned pursuant to Code of Civil Procedure section 177.5 or 575.5 and/or why counsel should not be appointed to represent the conservatee. The court, in its discretion, may make additional orders as appropriate.

(Adopted 1/1/2008; Rev. 1/1/2009)

Rule 4.18.25

Waiver of Account Involving Public Benefit Payments

The court may enter an order that the Conservator need not present an account pursuant to Probate Code section 2628. The order may be obtained, in advance of, or subsequent to, the account due date, by filing and serving a petition requesting an order waiving account. The petition must contain allegations for the current account period as required by Probate Code section 2628, subdivision (b). If authority is granted to waive future accounts, the conservator must annually file, prior to the review hearing required by Local Rule 4.18.24, a verified declaration stating that the conditions specified in Probate Code section 2628, subdivision (b), have been met for the applicable accounting period. If the conditions have not been met for any subsequent accounting period, an account must be filed for that account period as required by Probate Code section 2620.

(Adopted 1/1/2008)

Rule 4.18.26

Petition for Transfer

All orders transferring a conservatorship matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008; Rev. 1/1/2009)

CHAPTER 19 GUARDIANSHIPS

Rule 4.19.1

Temporary Guardianships

A. A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.

B. The court will require a full bond from the temporary guardian of the estate unless waived for good cause.

C. The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made that:

- 1.** An immediate necessity exists
- 2.** The parents have received notice or good cause exists to dispense with notice
- 3.** Petitioner knows of no objections to the petition
- 4.** The minor is residing with the petitioner at the time the request for temporary guardianship is made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.19.2

Petition for Appointment of Guardian: Jurisdiction

A. If there is a proceeding regarding the minor pending in Juvenile Court or Family Court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.

B. When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.

C. Any proposed guardian not related to the minor must disclose if they are serving as guardian for any other minors to whom they are not related.

D. Allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, must not appear in the petition, but may be submitted on a separate document that must be held as a separate confidential document. (Fam. Code, § 3041.)

(Adopted 1/1/1990, Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.19.3

Co-Habitant of Proposed Guardian

A. If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor and a copy of the petition and notice must be served by mail on said co-habiting adult.

B. Written consent of the co-habiting adult must be filed with the court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.19.4

Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents

Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the juvenile proceedings pursuant to the request and direction of the Juvenile Court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 4.19.5

Investigation

A. Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations in San Diego County will be done by the Family Court Services, Health and Human Services Agency (Guardianship Unit) or the Court Investigator as follows:

(For these purposes, relative is defined by Prob. Code, § 1513, subd. g.)

1. Guardianship of the Person, or Person and Estate-Relative.

a. Submit Order Directing or Waiving Investigation to Probate Services with petition for appointment. (Fill out order, check #1.)

b. Call Family Court Services for an appointment within three days of filing. Locations and phone numbers can be found at www.sdcourt.ca.gov.

c. Follow directions received from Family Court Services.

d. At the discretion of the court, an abbreviated report may be ordered in lieu of a full investigation.

e. Hearings are set no sooner than 60 days from filing to allow Family Court Services to Prepare the investigation report.

2. Guardianship of the Person, and/or Estate-Non-Relative.

a. Per Probate Code section 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

b. Submit the Order Directing or Waiving Investigation to Probate Services (Fill out order, check #2.) with the petition for appointment.

c. Send a second copy of the petition only to Department of Social Services, Guardianship Unit, at the address listed in their instructions. This will expedite assignment for investigation and minimize court continuances.

d. Hearings are set no sooner than 60 days from filing.

3. Guardianship of the Estate only-Relative or Non-Relative.

a. Submit Order Directing or Waiving Investigation to Probate Services. (Fill out order, check #3.) with the petition for appointment.

b. Send copy of Order Directing or waiving investigation to the Court Investigator to initiate investigation along with a completed Guardianship Questionnaire and fee.

c. If a waiver of court investigation is requested, submit the “Application for Waiver of Investigation”, “Guardianship Questionnaire” and “Order Directing or Waiving Investigation” to the Probate Business Office. (Fill out order, do NOT check a box.)

d. If waiver is approved, appointment will proceed. If waiver is denied, counsel will receive a copy of the Order Directing Investigation and should contact the Court Investigator.

B. If waiver of investigation is sought, the request must be made in advance of the hearing to provide sufficient time for review and processing. At least 10 days must be allowed.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.19.6

Bond at Appointment and Accounting

A. The court will impose a bond pursuant to Probate Code section 2320 and California Rules of Court, rule 7.207, or require the funds to be placed in blocked accounts. In a guardianship, the relationship of parent does not constitute good cause for waiving bond.

B. The report and account must allege the amount of bond in effect and whether it is sufficient to cover personal property, income and recovery bond. Additional or reduced bond may be suggested as needed.

C. See Rule 4.18.11, Bond Review Hearing, which also applies to appointment of guardians of the estate. (Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.19.7

Additional Powers

A. The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

B. A petition to transfer the minor to another state, once approved by the court, will be continued for a 60 day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.19.8

Investments by Guardian

A. See Rule 4.18.15.

B. The guardian should also consider the circumstances of the estate, indicated cash needs and the date of prospective termination of the guardianship.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.19.9

Timely Accounts and Reports

A. The court will consider, on an ex parte basis, a 30 day extension of the time to file an account pursuant to Probate Code section 2620.2. Failure to file a timely accounting and set a hearing, as prescribed in Probate Code section 2620.2, may be deemed contempt of court and subject the guardian to sanctions pursuant to Code of Civil Procedure section 1209 or 177.5.

B. If funds are maintained in a blocked account, the court may order proof of continued deposits in lieu of a full accounting.

C. Every guardian of the person of a minor must file a report on the status of the guardianship. This report is due by its “compliance date” or not later than one year after the initial appointment. Thereafter, reports will be due annually. Failure to file the report and appear in court when required to do so may constitute “good cause” for the court to remove the guardian from his or her office.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.19.10

Required Form of Account

A. Accounts must follow the format prescribed in Probate Code sections 1060 et seq. and 2620, subdivision (a); California Rules of Court, rule 7.575; Local Rule 4.15.1 and the confidentiality and labeling prescribed by Local Rule 4.15.2, subsection D.

B. Where a guardian accounts for assets of more than one minor the accounting for each minor must be set forth separately within one report.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.19.11

Report to Accompany Accounting

A. The report of guardian must give the current age, status and whereabouts of minor.

B. The guardian's current address must be set forth in the report.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.19.12

Request for Use of Minor's Assets

A. If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422.

B. A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or included in an accounting and report.

C. The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

D. The request must be for a specific and limited purpose and for a limited period of time.

E. The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security if applicable.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.19.13

Fees and Commissions in Guardianships

A. The court will not grant a request for fees without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel's report.

C. Requests for compensation must be in accordance with California Rules of Court, rules 7.751 and 7.702.

D. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Guardians and Counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving accounting.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006)

Rule 4.19.14

Court Appointed Attorney and Guardian ad Litem

A. Any party petitioning for appointment of a guardian ad litem may suggest an independent individual to be appointed or request the court make such appointment. Due to the potential conflicts of interests, parents asserting individual claims or defenses may not serve as guardians ad litem for their children, absent a court order to the contrary. Appointment of a guardian ad litem may be requested by ex parte petition.

B. Any report required of a court appointed attorney or guardian ad litem must be filed no later than five days before the scheduled hearing.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.19.15

Petition for Transfer

All orders transferring a guardianship matter to the superior court in another county must include the name and address of the superior court to which the case is being transferred.

(Adopted 1/1/2008)

CHAPTER 20 TRUSTS

Rule 4.20.1

General

In all trust matters where an issue involves the interpretation of or change to the trust, the party seeking an interpretation or change to the trust shall lodge a copy of the trust with the court. By ex parte application, a party may seek to limit the scope of the lodgment.

(Adopted 1/1/2007)

Rule 4.20.2

Accounts

A. Accounts filed by trustees must conform to these rules and Probate Code sections 1060-1064.

B. The value of the property set forth in the decree of distribution, or a reconciliation thereof, must be the starting balance of the first account.

C. Unless the testator provides otherwise in the will, or the court specifically orders otherwise, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

D. Testamentary trust accounts and related proceedings must be filed in the estate case; but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003; Renum. 1/1/2006; Rev. & Renum. 1/1/2007)

Rule 4.20.3

Petition to Determine Title in Trust Matters (Probate Code section 850-Heggstad)

In trust matters filed with the court to determine the title to property under Probate Code section 850, the following allegations are required to be set forth in the petition:

A. The vesting of each asset at all relevant times;

B. Evidence that each asset was placed in trust;

C. Evidence of every transaction affecting title to each asset in question during the relevant time;

D. Where a transaction takes legal title to an asset out of the trust or occurs when title is not held by the trustee, evidence to overcome the inference that the Trustor intended that the transaction be considered a non-trust transaction;

E. The value of each asset to be transferred.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.20.4

Identification of Persons Entitled to Notice

In addition to the requirements of Probate Code section 17201 to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee will likewise be identified by name, address and relationship to the trustor(s).

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2007)

Rule 4.20.5

Trusts Established Before Decree of Distribution

A. Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

B. A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition. As to such a petition, the court will require 30 days' notice to beneficiaries.

C. Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code section 17200.

D. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

E. Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000 et seq.

F. If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to go, a petition to determine heirship may be filed to determine to whom distribution shall be made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2007)

Rule 4.20.6

Special Needs Trusts

A. With respect to Special Needs Trusts and Trusts sent to the Probate Court for review pursuant to Local Rule 2.4.6(c), the following must be included in the trust:

1. Provisions for appointment of successor trustee on approval of the Probate Court.
2. A payback provision must be inserted as required by title 42 of the United States Code section 1396(p)(4)(a).
3. Notice requirements on termination or death of beneficiary, and for any additions to the trust must be included.
4. Dispositive provisions must include disposition to heirs at law after payback required by title 42 of the United States Code section 1396(p)(4)(a).

B. Once the trial court has sent the trust to the Probate Court for review, it will be assigned to an Examiner for review and processing.

C. If the Probate Court approves the Special Needs Trust or Trust, a determination will be made whether the trust must be returned to the Probate Court to be brought under the Probate Court's jurisdiction. The trial court will make an appropriate order thereon, and the trustee of the newly established trust must file a "Review of Compliance with Probate Code section 3602 or 3611" with the Probate Court within 60 days.

D. A Special Needs Trust or Trust brought under the jurisdiction of the Probate Court will be assigned a new Probate case number and set for hearing. First appearance fees will apply. Any further trust proceedings and bonds must be filed under the new Probate case number. Petitioner will include a copy of the Special Needs Trust and the order establishing the trust with the petition which opens the new trust case.

E. A Special Needs Trust or Trust established by Probate Code sections 2580 and 3100 must include the same requirements as listed in rule 7.903 of the California Rules of Court and as listed in subsection A. (1-4) above. (Adopted 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 4.20.7

Fees and Commissions in Trusts

A. A separate declaration setting forth the information required by California Rules of Court, rule 7.756 must accompany any request for approval of fees and may not be included in the body of the petition. The trustee must include the hourly rate upon which the fee request is based. Institutional trustees seeking approval of fees premised on fee schedules must also submit their published fee schedule for the period involved.

B. Attorneys' fee requests must comply with California Rules of Court, rule 7.702.

C. On petition the court may authorize periodic payments on account to the trustee. The petition must describe the services to be rendered on a periodic basis, the value of the services to be performed, the method of calculating the value, and the reason why authority to make payments is requested. In fixing the amount of the periodic payment, the court must take into account the services to be rendered on a periodic basis and the reasonable value of such services. The trustee may make payments pursuant to the court's order only if the services described in the petition are actually rendered. The payments made are subject to review by the court upon the next succeeding account to determine that the services were actually rendered and that the amount paid on account was not unreasonable. If the court finds that the amount paid on account was either excessive or inadequate in view of the services actually rendered, the court may make such additional orders as appropriate.

D. In a trust accounting, an allegation must be made as to the total amount of attorneys' fees paid during the applicable accounting period. (Adopted 1/1/2007; Rev. 1/1/2009)

Rule 4.20.8

Petitions for Modifications or Termination of Trusts

A. Petitions seeking the amendment of a trust must set forth the portion of the trust to be amended by designating language to be deleted in strikeout format, and language to be added by underlining.

B. Petitions seeking authority to modify or terminate a trust pursuant to Probate Code section 15403 must affirmatively allege that the trust is not subject to a valid restraint on transfer of the beneficiary's interest as provided in Probate Code section 15300 et seq.

C. Petitions seeking to amend the provisions of a trust relating to the identification of a successor trustee must contain a provision requiring a trustee's bond unless the petition contains allegations upon which the court may make the finding required by Probate Code section 15602, subdivision (b). (Adopted 1/1/2008)

CHAPTER 21 MISCELLANEOUS

Rule 4.21.1

Withdrawal of Counsel of Record

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.

A. Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a Motion to Withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

B. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545. Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the Notice required by Probate Code section 1213.
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.21.2

Appointment of Probate Referees

A. Probate referees will be appointed in rotation.

B. A probate referee may be designated out of rotation where the property has already been appraised by the probate referee or interests in the property are part of two pending proceedings. Examples of such proceedings would be the conservatorship of husband and wife, simultaneous deaths or death of husband and wife within one year of each other, decedent's estate following conservatorship, guardianships of siblings and court proceedings following non-judicial proceedings.

C. A declaration must be presented with the order designating probate referee which sets forth the relevant circumstances.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.21.3

Reserved for Future Use

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Del. 1/1/2009)

Rule 4.21.4

Settlements Involving Charities

The Attorney General is a party to and is entitled to notice of probate matters involving interests of charities. Attention is directed, for example, to Government Code section 12591, as well as to the Probate Code.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.21.5

Dismissal of Proceedings

A. Proceeding May Not Be Dismissed. Once a case number has been assigned to a probate estate, conservatorship, guardianship or trust proceeding, the entire proceeding may not be dismissed, except upon duly noticed motion, and order of the court.

B. Individual Petitions. A petition may be dismissed only with proper notice and upon an order of the court. Requests for dismissal, with or without prejudice, may be made by the petitioner either in writing or orally at any time prior to the commencement of trial. The court considers notice adequate if given to the persons entitled to notice of, and in the manner provided for, the petition for which dismissal is sought. The court may, upon good cause shown, waive or shorten the notice period as may be appropriate.

C. "Off Calendar." A petition may be taken "off calendar" by the petitioner or by order of the court. An order taking a petition "off calendar" vacates all future hearing dates for that petition, although the petition remains a pending proceeding. A petition may be re-set for hearing only upon the written, signed and verified request of the petitioner filed with the court no later than three months from the hearing date previously taken off calendar. A petition may not be re-set for hearing unless all defects, with the exception of notice, have been cured. Proof of proper notice of the new hearing date must be provided in accordance with applicable provisions of law. Proceedings that have been taken off calendar are subject to dismissal for lack or delay in prosecution in accordance with the Code of Civil Procedure section 583.110 et seq.

D. Objections and Responses. An objection and/or response may be withdrawn by the party originally filing it upon filing of a verified statement of withdrawal, and providing notice of such withdrawal to all persons entitled to notice of the original filing.

E. Objections to Dismissal or Withdrawal of Objections/Responses. Any party, or interested person, may object to the dismissal or withdrawal by filing opposition within fifteen days of notice of the request for dismissal or withdrawal. The court may set a hearing on the request for dismissal or withdrawal, or enter an order based upon the pleadings.

F. Procedure for filing of Request to Dismiss. A party seeking to dismiss a petition must file the appropriate pleading or form requesting dismissal, and serve the same with the notice required herein. (Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.21.6

Declaratory Relief Petitions (Prob. Code, § 21320)

A. A copy of the proposed, unsigned and unverified petition marked “proposed” below the caption, must be attached to the Probate Code section 21320 application. The Probate Code section 21320 application must be accompanied by points and authorities in support thereof.

B. If the court determines the proposed petition or a portion thereof would not violate the no contest clause contained in the instrument, a duplicate original of the proposed petition, or the approved portion thereof, signed and verified must be filed with the court and set for hearing. The wording “proposed” must be deleted from the petition to be filed.

C. The court will not grant a petition by the process of redacting or amending the underlying proposed petition.

D. If objections are filed, the matter will be set for the next available law and motion calendar not earlier than 30 days from the date of the hearing. In the North County Division, if no objections are filed, the matter will be heard as scheduled. In the Central Division, if no objections are filed, the matter will be deemed submitted to the court for decision pursuant to SDPR 4.22.5 and a ruling will be forthcoming within 30 days.

(Adopted 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 4.21.7

Disclosure by Conservators, Guardians, and Attorneys

Conservatees and Wards are generally not in a position to give their informed consent to representation by attorneys, or the appointment of a Conservator and/or Guardian. To avoid the appearance of a conflict of interest in duty, a Conservator, proposed Conservator, Guardian, proposed Guardian, and/or attorney who appears in matters involving a Conservatee, Ward, or their estate, must disclose all present and past relationships to the court at their earliest opportunity in the following circumstances:

A. Conservators. A person who is or has served in the past as a Conservator of the individual or estate which is the subject of the pending proceeding [Trust or Decedent’s Estate] must disclose all present and past relationships.

B. Attorneys.

1. An attorney for a Conservatee or proposed Conservatee, or a Conservator or proposed Conservator, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

2. An attorney for a Ward or proposed Ward, or a Guardian or proposed Guardian, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

3. In complying with this rule an attorney shall not be required to violate an existing attorney-client privilege, but should consider that continued participation in the matter may constitute a violation of the Professional Rules of Conduct.

C. Guardians. A person who is or has served in the past as a Guardian of the individual or estate which is the subject of the pending proceeding (Conservatorship, Trust, or Decedent’s Estate) must disclose all present and past relationships.

(Adopted 1/1/2006)

Rule 4.21.8

Reserved for Future Use

(Del. 1/1/2009)

CHAPTER 22 CONTESTED MATTERS

Rule 4.22.1

Introduction

When written objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court of either Central or North County Division (herein "Probate Court"), the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes. (Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.22.2

Filing of Petitions and Contests and Setting Contested Matters for Hearing

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be filed as soon as the petitioner knows of facts establishing a claim or the right to the requested relief. All such matters must be set for hearing by the clerk of the court as follows:

A. By Statute or Rule of Court.

B. Notice Not Prescribed. If the time for notice of hearing on a particular matter is not set forth in a statute or a rule of court, the time for notice of hearing must be 30 days.

C. Will Contests. A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than 30 days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must file a Certificate of Progress (on the form approved by the Superior Court) at least two court days prior to the hearing. If service is not completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions, including the dismissal of the will contest, pursuant to the civil rules of San Diego Superior Court (Division II). When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest. (Adopted 1/1/1993; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.22.3

Service of Notice

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, a Certificate of Progress (on the form approved by the Superior Court) must be filed at least two (2) court days prior to the hearing.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/12/2002; Renum. 1/1/2006)

Rule 4.22.4

Filing of Objections

A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing and filed either as required by statute or, in the absence of specific statutory requirements, by 4:30 pm at least three court days before the next scheduled hearing date on the petition or pleading. If written objections have not been filed in accordance with this rule, the court will either continue the matter to allow compliance with this rule or decide the matter as if no objection had been made, if the court, in its discretion, determines a party has been dilatory in complying with this rule.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.22.5

Determination of Contested Matters

A. General. Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court will determine the type of hearing required, the length of the hearing and the manner of disposition.

B. Submission Without Evidentiary Hearing. If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

C. Short Cause Matter Hearing. If the court determines that the matter will require an evidentiary hearing of three hours or less (a “hearing”), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a “short cause” matter.

If counsel desire to submit trial briefs, they must be filed at the business office of the Probate Court and faxed (in accordance with Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five count days prior to the date set for the short cause hearing.

Due to the “Short cause” nature of this hearing, the court will not entertain, receive or read responsive pleadings to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.22.11 do not apply to short cause hearings.

D. Trial. If the court determines that the matter will require an evidentiary hearing of more than three hours (a “trial”), the court may set the matter for a case management conference (see Rule 4.22.11 below).

E. EADACPA Complaints. When filing a civil action citing the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) involving an individual whose estate or person is under conservatorship, refer to rule 2.4.9 for procedural guidelines.

F. Other Procedural Orders. If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.
(Adopted 1/1/1993; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.22.6

Meet and Confer, Joint Case Management Report

If a contested matter is set for a case management conference, counsel must:

A. Meet and confer no later than 20 days before the case management conference.

B. File with the court a "Case Management Statement" (CM-110) as Required by California Rules of Court, rule 3.725 - FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN SANCTIONS BEING IMPOSED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 575.2.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.22.7

Case Management Conference

At the case management conference, the court may take any one or more of the following actions:

A. Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

B. Set the following dates based upon review of the “Case Management Statement” (CM-110) and the representations of counsel:

1. Trial date;
2. Trial readiness conference date;
3. Discovery cut-off date;
4. Law and motion cut-off date;
5. Dates for the exchange of experts;
6. Settlement conference date, if requested (see Rule 4.22.10).

C. Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

D. Dispense with any of the procedures provided for herein for good cause.

E. Direct counsel to submit an order setting forth the dates and directives of the court.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.22.8

Joint Trial Statement

No later than five days prior to the trial readiness conference, counsel must meet and confer in person to prepare in good faith a Joint Trial Statement. The Joint Trial Statement must contain the following:

A. Summary Statement of Facts, including, where applicable, the following: date of decedent's death and dates of wills, codicils and other operative documents; identification and inclusive dates of appointment of the fiduciary (administrator, executor, conservator, trustee, etc.); names of the parties and their counsel; dates and

substance of prior relevant court orders; identification of pleadings previously filed which are relevant to the action; a summary of the case so as to apprise the court of the nature of the action.

B. Statement of Uncontested Material Facts.

C. Statement of Contested Material Facts.

D. Statement of Contested Material Issues. Counsel must set forth a concise statement and comprehensive discussion of each contested issue, a list of all documents (or other tangible evidence) to be offered at the time of trial regarding each issue and a summary of the content of each such document, as required by the court. Each contested item of an account must be specifically identified. Counsel will also provide as an exhibit a copy of each appraisal and report of an expert to be offered at the time of trial.

NOTE: FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN AN ORDER EXCLUDING THE DOCUMENT, SCHEDULE, SUMMARY, REPORT OR APPRAISAL, OR TESTIMONY OF THE EXPERT AT TRIAL.

E. List of Witnesses Indicating Whether Each Witness is a Percipient or Expert Witness. Except for impeachment witnesses, the court may, in its discretion, refuse to permit any witness to testify who is not listed.

F. Index of Exhibits. Counsel must pre-mark and jointly index all exhibits numerically as court exhibits. The index must set forth the following as to each exhibit: exhibit number; by whom offered; a description of each exhibit sufficient for identification; whether the parties have stipulated to admissibility, and, if not, the legal grounds for objections to admissibility. Exhibits must be numbered serially, as court exhibits, beginning with the number "1" (one); a block of exhibit numbers may be allocated to each party. If discovery, such as depositions, requests for admissions, interrogatory responses or any other form of discovery responses, is to be used in lieu of live testimony at trial, such discovery must be set forth in the exhibit index together with the legal grounds for objections to admissibility. Counsel must also comply with the provisions of Code of Civil Procedure section 2025, subdivisions (1) and (u) with respect to the anticipated use of videotaped depositions. Counsel must prepare and exchange a written transcript of any other audio and/or video presentations intended to be used at trial in accordance with the California Rules of Court, rule 2.1040. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN AN ORDER EXCLUDING DOCUMENT(S) AND/OR EXHIBITS AT TRIAL.

G. Stipulations Regarding Admission of Evidence and Summaries of the testimony.

H. All Points and Authorities (legal arguments) on which counsel intends to rely.

I. A statement of the specific relief requested. The relief may be requested in the alternative.

J. The Joint Trial statement must be signed by all counsel (and litigants appearing in propria persona) who will appear and participate in the trial.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.22.9

Trial Readiness Conference; Sanctions

The Joint Trial Statement must be presented to the court at the Trial Readiness Conference.

A. Separate reports will not be accepted. The completed report must be presented to the judge at the scheduled conference. The function of the joint disposition conference is to assure that the matter is ready for trial.

B. Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the joint disposition conference.

C. If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Joint Trial Statement, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.

(Adopted 1/1/1993; Rev. 7/1/1995, 7/1/1996; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.22.10

Settlement Conference

Upon filing a written stipulation that the probate judge may act as both settlement judge and trial judge if the matter is not settled, which is signed by all parties and their attorneys of record the probate judge in the central division will preside at settlement conferences unless any party requests that another judge be designated or the probate judge determines it would be inappropriate under the circumstances. If another judge is to be designated, an effort will be made to select a former probate judge or a judge with extensive probate experience. Counsel may also,

by unanimous approval, accept as settlement judge one or more temporary judges designated by the probate judge. If all parties, after the case management conference, agree upon a settlement conference to assist in resolving the matter, a settlement conference may be set ex parte.

Except in special circumstances, the probate judge in the North County Division will not hear settlement conferences. Where a judicial settlement conference has been agreed to or ordered by the probate judge, the probate department will assist the parties in arranging for a judge to preside over the settlement discussions.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.22.11

Trial Briefs and Motions in Limine

A. All motions in limine (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to in limine motions must be filed and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

B. Prior to the time the matter is called for trial, the parties must provide the clerk of the trial court with a final joint exhibit list, which must include appropriate summaries, as set forth hereafter. The parties must also provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

C. If ordered by the court at the Case Management Conference, each party seeking a surcharge or to justify items of an account to which objections have been made in the Joint Trial Report must prepare a summary of the documentary evidence supporting the request for surcharge or the accounting of contested items (e.g., canceled checks, receipts, bills, etc.). This summary must be included in the final joint exhibit list and exhibit binders.

(Adopted 1/1/1993, Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.22.12

Reserved for Future Use

Rule 4.22.13

Statements and Documents not Admissible Evidence

All responsive pleadings and all other documents filed with the court concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, are not admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. Evidence Code section 1119 governs statements and documents disclosed in mediation.

This rule also applies to proceedings conducted before two-attorney settlement panels in North County.

(Adopted 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.14

Alternative Dispute Resolution in Contested Probate Matters.

A. Statement of Purpose. Contested estate, trust, conservatorship, guardianships and other matters covered by the Probate Code are uniquely appropriate for Alternative Dispute Resolution in the interests of prompt, efficient and economical dispute resolution. Mediation is the preferred method of alternative dispute resolution in contested matters. The court therefore encourages parties to mediate their dispute and may order parties to mediation if appropriate.

B. ADR Defined. Generally, Alternative Dispute Resolution (“ADR”) is a term covering the full range of techniques designed to resolve disputes short of trial in the courts, including, but not limited to, mediation, binding arbitration, a judicially supervised settlement conference, a two-attorney settlement panel in North County, and neutral evaluation.

These rules apply to all methods of ADR except references and trials by reference pursuant to California Code of Civil Procedure sections 638-645.2.

C. Court Ordered Alternative Dispute Resolution Absent Objection. At the first practical opportunity in a contested matter, the court will order the matter to mediation unless a party objects. Additionally, the court may order the parties to an appropriate method of ADR at any time in an attempt to resolve the matter.

D. Court Determination Re ADR Upon Objection. At the time of the ADR assignment, a party may orally or in writing object to the need for ADR, the method of ADR selected, the selection of the neutral person or neutral panel, the method of payment of the costs of ADR, and/or the timing of ADR. The court has the discretion to make appropriate orders, which may include ordering the parties to meet and confer, ordering an appropriate method of ADR, proceeding pursuant to Local Rule 4.22.1 et seq., or deferring ADR until discovery has been completed. If

the court orders ADR, it may restrict discovery until the completion of ADR, but if all ADR efforts are ultimately unsuccessful, discovery will proceed in accordance with the Civil Discovery Act. The order for ADR may be made by a minute order or by a formal order at the request of any party.

E. Continuance Pending Completion of ADR. Upon ordering ADR, the court may continue the proceeding to a date when ADR will be completed, or may set the matter for hearing or trial, as provided in Local Rule 4.22.5. If initial ADR is unsuccessful, the court may either continue the matter for further ADR efforts or, if the court concludes further efforts at ADR are not warranted, set the matter for such further proceedings the court deems appropriate.

(Adopted 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.15

Parties Select ADR Facilitator

Upon ordering the parties to ADR, the parties and their counsel must jointly select a qualified mediator or ADR facilitator to conduct the ADR. If the parties are unable to select the method of ADR or the neutral ADR facilitator, the court, sua sponte or upon request, will provide guidance to the parties, including advising the parties of ADR programs commonly used in the area. If the parties ultimately cannot agree, the court will make appropriate orders.

(Adopted 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.16

Costs and Fees

It is presumed that the parties will share equally in the costs of ADR. However, absent the agreement of all interested parties with regard to allocation of costs and fees, the court may, in its discretion, allocate the costs and fees of ADR to one or more of the interested parties to the contested matter, charge such costs and fees to the fiduciary (i.e., the executor, conservator, trustee or guardian of the estate) and/or order the fiduciary to advance such costs and fees. Further, if the court determines that any party acted in bad faith or unreasonably in the ADR process, the court may charge ADR costs and fees to such party. In circumstances where the court finds that continued litigation and the expenditure of funds in support thereof is not in the best interests of the estate or trust, the court may order that the costs and fees of mediation be advanced by the trust or estate, subject to later allocation. For purposes of this rule, the term “costs and fees of ADR” include only those costs and fees directly relating to the ADR service and do not include the attorneys’ fees or other costs of the parties.

(Adopted 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.22.17

ADR Statement Re: Impartiality

Every person who conducts ADR pursuant to these rules must, as soon as practicable, disclose to all parties any facts that might reasonably cause any party to entertain a doubt as to the impartiality of such ADR facilitator. ADR facilitators will comply with all applicable disclosure standards, including, but not limited to, those found in California Rules of Court, rule 3.816.

(Adopted 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)

CHAPTER 23 LAW AND MOTION AND DISCOVERY MATTERS

Rule 4.23.1

Preliminary Definitions

An application for relief based upon the Probate Code must be brought as a petition. An application for relief based upon the Code of Civil Procedure must be brought as a motion.

(Adopted 1/1/2006)

Rule 4.23.2

Applicability of Division Two in Probate Proceedings

A. Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division II of these Rules and the California Rules of Court beginning at rule 3.1100 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

B. The form and format of discovery proceedings in probate are governed by the California Rules of Court, rule 3.1000 et seq., which will be enforced in all probate proceedings.
(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.23.3

Filing Motion Papers

A. Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed directly with Probate Services at least 16 court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

B. Unless otherwise ordered by the court, motions must be presented to Probate Services prior to the issuance of a hearing date.

C. The phrase “LAW & MOTION” must appear at the beginning of the title of all papers submitted to the court in support of the motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.23.4

Hearings

Unless otherwise authorized by the court, all Probate Law and Motion and Discovery will be set for hearing as posted on the court’s website, www.sdcourt.ca.gov. Once set, the matter may be continued only with a written order of approval from the court. A matter “continued” by stipulation without court approval will be taken off calendar.

(Adopted 1/1/2006; Rev. 1/1/2009)

Rule 4.23.5

Filing and Serving Opposition or Support Papers on Motion

A. Opposition, joinder and reply papers must be filed in Probate Services. The deadlines provided by law for serving and filing opposition and reply papers, as provided in Code of Civil Procedure section 1005, subdivision(b), will be enforced for all matters. In this regard, the court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.

B. The phrase “LAW & MOTION” must appear at the beginning of the title of all papers submitted to the Court in opposition, joinder and reply to a pending motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.23.6

Filing Within 3 Days of Hearing

When papers are filed within three calendar days of the hearing, service on opposing counsel must be by personal delivery (or by fax when permitted by Cal. Rules of Court, rule 2.306).

(Adopted 1/1/2006)

Rule 4.23.7

Filing of Proof of Service

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.

(Adopted 1/1/2006)

Rule 4.23.8

Tentative Rulings

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with rule 2.1.19. For all Probate departments, tentative rulings will be made available by telephone at 619-450-7381 and on the court's website at www.sandiego.courts.ca.gov (click on “tentative rulings” from the probate webpage) by 3:00 p.m. on the day before hearing.

(Rev. & Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2009)

APPENDIX I
(Deleted 1/1/2009)